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*Attorneys for Plaintiff,  
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**UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA**

## **EDWARD DUNAGAN.**

Plaintiff,

V.

## **WELLS FARGO BANK, N.A..**

**Defendant.**

**Case No.:**

## **COMPLAINT FOR DAMAGES FOR VIOLATIONS OF:**

- I. TELEPHONE CONSUMER PROTECTION ACT, 47 U.S.C. § 227, ET SEQ.; AND,
- II. THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT CAL. CIV. CODE §§ 1788-1788.32

## **JURY TRIAL DEMANDED**

## INTRODUCTION

1. The California legislature has determined that the banking and credit system and grantors of credit to consumers are dependent upon the collection of just and owing debts, and that unfair or deceptive collection practices undermine the public confidence that is essential to the continued functioning of the banking and credit system and sound extensions of credit to consumers. The Legislature has further determined that there is a need to ensure that debt collectors exercise this responsibility with fairness, honesty, and due regard for the debtor's rights and that debt collectors must be prohibited from engaging in unfair or deceptive acts or practices.<sup>1</sup>
2. EDWARD DUNAGAN (“Plaintiff”), by Plaintiff’s attorneys, brings this action to challenge the collection efforts of WELLS FARGO BANK, N.A. (“Defendant”) with regard to attempts by Defendant, debt collector, to unlawfully and abusively collect a debt allegedly owed by Plaintiff, and this conduct caused Plaintiff damages.
3. Moreover, the Telephone Consumer Protection Act (“TCPA”) was designed to prevent calls and messages like the ones described within this complaint, and to protect the privacy of citizens like Plaintiff. “Voluminous consumer complaints about abuses of telephone technology – for example, computerized calls dispatched to private homes – prompted Congress to pass the TCPA.” *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740, 744 (2012).
4. In enacting the TCPA, Congress intended to give consumers a choice as to how creditors and telemarketers may call them, and made specific findings that “[t]echnologies that might allow consumers to avoid receiving such calls are not universally available, are costly, are unlikely to be enforced, or place an inordinate burden on the consumer. TCPA, Pub.L. No. 102–243, § 11. Toward this end, Congress found that

<sup>1</sup> Cal. Civ. Code §§ 1788.1 (a)-(b)

[b]anning such automated or prerecorded telephone calls to the home, except when the receiving party consents to receiving the call or when such calls are necessary in an emergency situation affecting the health and safety of the consumer, is the only effective means of protecting telephone consumers from this nuisance and privacy invasion.

*Id.* at § 12; see also *Martin v. Leading Edge Recovery Solutions, LLC*, 2012 WL 3292838, at\* 4 (N.D.Ill. Aug. 10, 2012) (citing Congressional findings on TCPA's purpose).

5. Congress also specifically found that “the evidence presented to the Congress indicates that automated or prerecorded calls are a nuisance and an invasion of privacy, regardless of the type of call....” *Id.* at §§ 12-13. See also, *Mims*, 132 S. Ct. at 744.
6. Plaintiff makes these allegations on information and belief, with the exception of those allegations that pertain to the plaintiff, or to the plaintiff’s counsel, which Plaintiff alleges on personal knowledge.
7. While many violations are described below with specificity, this Complaint alleges violations of the statute cited in its entirety.
8. Unless otherwise stated, all the conduct engaged in by Defendant took place in the State of California.
9. Any violations by Defendant were knowing, willful, and intentional, and Defendant did not maintain procedures reasonably adapted to avoid any such violation.
10. Unless otherwise indicated, the use of Defendant’s name in this Complaint includes all agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers of that defendant named.

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## **JURISDICTION AND VENUE**

11. This Court has federal question jurisdiction because this case arises out of violation of federal law. 47 U.S.C. §227(b); *Mims v. Arrow Fin. Servs., LLC*, 132 S. Ct. 740 (2012). In addition, this Court also has jurisdiction of Plaintiff's supplemental State claims pursuant to 28 U.S.C. § 1367.
12. This action arises out of Defendant's violations of (i) the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227, et seq.; and, (ii) the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788.17 ("RFDCPA").
13. Because Defendants conduct business within the State of California, personal jurisdiction is established.
14. Venue is proper in the United States District Court for the Northern District of California pursuant to 28 U.S.C. § 1391(b)-(c) because Defendant is headquartered in the City and County of San Francisco, California; Defendant is deemed to reside in any judicial district in which it is subject to personal jurisdiction at the time the action is commenced; Defendant's contacts with this District are sufficient to subject it to personal jurisdiction; and, a substantial part of the vents giving rise to the claims occurred in this District.

## PARTIES

15. Plaintiff is a natural person who resides in Apple Valley, State of California, from whom a debt collector sought to collect a consumer debt which was due and owing or alleged to be due and owing from Plaintiff, and is a “debtor” as that term is defined by California Civil Code § 1788.2(h).
16. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all times mentioned herein was, a national bank with its principal place of business in San Francisco, California and State of Incorporation in the State of Delaware.

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1 17. Plaintiff is informed and believes, and thereon alleges, that Defendant, in the  
2 ordinary course of business, regularly, on behalf of themselves or others,  
3 engages in debt collection as that term is defined by California Civil Code §  
4 1788.2(b), and are therefore “debt collectors” as that term is defined by  
5 California Civil Code § 1788.2(c).

6 18. This case involves money, property or their equivalent, due or owing or alleged  
7 to be due or owing from a natural person by reason of a consumer credit  
8 transaction. As such, this action arises out of a “consumer debt” and “consumer  
9 credit” as those terms are defined by Cal. Civ. Code § 1788.2(f).

10 **FACTUAL ALLEGATIONS**

11 19. At all times relevant, Plaintiff is an individual residing within the State of  
12 California.

13 20. Plaintiff is informed and believes, and thereon alleges, that at all times  
14 relevant, Defendant conducted business in the State of California.

15 21. Sometime prior to October 2014, Plaintiff allegedly incurred financial  
16 obligations to Defendant that were money, property, or their equivalent, which  
17 is due or owing, or alleged to be due or owing, from a natural person to  
18 another person and were therefore “debt(s)” as that term is defined by  
19 California Civil Code §1788.2(d), and a “consumer debt” as that term is  
20 defined by California Civil Code §1788.2(f).

21 22. Plaintiff takes no position with regard to the validity of the alleged debt.

22 23. Subsequently, Defendant began contacting Plaintiff on Plaintiff’s cellular  
23 telephone number ending in 1151, in an attempt to collect Plaintiff’s alleged  
24 debt.

25 24. Defendant initiated these telephonic communications from the following  
26 telephone numbers, including, but not limited to: (800) 292-3451; (909) 796-  
27 4592; (909) 890-4592; and, (909) 786-4592.

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- 1 25. As a result of the overwhelming number of calls, on or about October 2014,  
2 Plaintiff contacted Defendant via telephone and revoked any prior consent to  
3 be called by Defendant. Despite this revocation of consent, Defendant  
4 continued to call Plaintiff's cellular telephone.
- 5 26. Due to the continued telephonic communications from Defendant, on or about  
6 December 2014, Plaintiff contacted Defendant via telephone and again  
7 revoked any consent to be called by Defendant. Despite this second  
8 revocation, Defendant continued to call Plaintiff's cellular telephone.
- 9 27. In a third attempt to stop Defendant's calls, on or about January 2015,  
10 Plaintiff walked into one of Defendant's branches located in Apple Valley,  
11 CA, and spoke with "Delores," Defendant's representative, who made an  
12 inquiry on behalf of Plaintiff to have Defendant cease its collection calls.
- 13 28. Despite these numerous revocations of consent to be called, just in the six  
14 months between February and July of 2015, Defendant called Plaintiff's  
15 cellular telephone at least thirty-one (31) times.
- 16 29. Defendant used an "automatic telephone dialing system" ("ATDS"), as  
17 defined by 47 U.S.C. § 227(a)(1) to make its calls to Plaintiff seeking to  
18 collect the alleged debt allegedly owed by Plaintiff in conjunction with an  
19 "artificial or prerecorded voice" as prohibited by 47 U.S.C. § 227(b)(1)(A).
- 20 30. Plaintiff further alleges that Defendant utilized an ATDS due to the long  
21 silence between Plaintiff answering the telephonic communications in  
22 question and Defendant's response. Such a delay is indicative of usage of an  
23 ATDS and/or a predictive dialer.
- 24 31. This ATDS has the capacity to store or produce telephone numbers to be  
25 called, using a random or sequential number generator.
- 26 32. Defendant lacked "prior express consent" to utilize an ATDS or predictive  
27 dialer to contact Plaintiff on Plaintiff's cellular telephone.

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1       33. Defendant's calls constituted calls that were not for emergency purposes as  
2       defined by 47 U.S.C. § 227(b)(1)(A)(i).

3       34. Defendant's calls were placed to telephone number assigned to a cellular  
4       telephone service for which Plaintiff incurs a charge for incoming calls  
5       pursuant to 47 U.S.C. § 227(b)(1).

6       35. Through this conduct, Defendant violated 15 U.S.C. § 1692d by engaging in  
7       conduct the natural consequence of which was to harass, oppress and abuse  
8       Plaintiff in connection with the collection of Plaintiff's alleged debt. This  
9       section is incorporated into the RFDCPA through Cal. Civ. Code § 1788.17;  
10      thus, Defendant violated Cal. Civ. Code § 1788.17.

11      36. Through this conduct, Defendant violated 15 U.S.C. § 1692d(5) by causing  
12      Plaintiff's telephone to ring repeatedly and continuously with the intent to  
13      annoy, abuse and harass Plaintiff. This section is incorporated into the  
14      RFDCPA through Cal. Civ. Code § 1788.17; thus, Defendant violated Cal.  
15      Civ. Code § 1788.17.

16      37. Through this conduct, Defendant violated 15 U.S.C. § 1692f by using unfair  
17      and unconscionable means to collect Plaintiff's alleged debt. This section is  
18      incorporated into the RFDCPA through Cal. Civ. Code § 1788.17; thus,  
19      Defendant violated Cal. Civ. Code § 1788.17.

20      38. Through this conduct, Defendant violated Cal. Civ. Code §1788.11(d) by  
21      causing Plaintiff's telephone to ring repeatedly and continuously to annoy  
22      Plaintiff.

23      39. Through this conduct, Defendant violated Cal. Civ. Code §1788.11(e) by  
24      communicating with Plaintiff with such frequency by telephone as to be  
25      unreasonable and to constitute harassment.

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1                   **CAUSES OF ACTION CLAIMED BY PLAINTIFF**

2                   **COUNT I**

3                   **VIOLATION OF THE ROSENTHAL FAIR DEBT COLLECTION PRACTICES ACT**

4                   **Cal. Civ. Code §§ 1788-1788.32 (RFDCPA)**

5     40. Plaintiff incorporates by reference all of the above paragraphs of this Complaint  
6         as though fully stated herein.

7     41. The foregoing acts and omissions constitute numerous and multiple violations  
8         of the RFDCPA.

9     42. As a result of each and every violation of the RFDCPA, Plaintiff is entitled to  
10         any actual damages pursuant to Cal. Civ. Code § 1788.30(a); statutory damages  
11         for a knowing or willful violation in the amount up to \$1,000.00 pursuant to  
12         Cal. Civ. Code § 1788.30(b); and reasonable attorney's fees and costs pursuant  
13         to Cal. Civ. Code § 1788.30(c) from Defendant.

14                   **COUNT II**

15                   **NEGLIGENT VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

16                   **47 U.S.C. § 227 Et Seq.**

17     43. Plaintiff incorporates by reference all of the above paragraphs of this Complaint  
18         as though fully stated herein.

19     44. The foregoing acts and omissions of Defendant constitutes numerous and  
20         multiple negligent violations of the TCPA, including but not limited to each and  
21         every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

22     45. As a result of Defendant's negligent violations of 47 U.S.C. § 227 et seq,  
23         Plaintiffs is entitled to an award of \$500.00 in statutory damages, for each and  
24         every violation, pursuant to 47 U.S.C. § 227(b)(3)(B).

25     46. Plaintiff is also entitled to and seeks injunctive relief prohibiting such conduct  
26         in the future.

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### COUNT III

# **KNOWING AND/OR WILLFUL VIOLATIONS OF THE TELEPHONE CONSUMER PROTECTION ACT**

47 U.S.C. § 227 ET SEQ.

47. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

48. The foregoing acts and omissions of Defendant constitutes numerous and multiple knowing and/or willful violations of the TCPA, including but not limited to each and every one of the above-cited provisions of 47 U.S.C. § 227 et seq.

49. As a result of Defendant's knowing and/or willful violations of 47 U.S.C. § 227 et seq., Plaintiffs is entitled to an award of \$1,500.00 in statutory damages, for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).

50. Plaintiff is also entitled to and seeks injunctive relief prohibiting such conduct in the future.

## PRAYER FOR RELIEF

**WHEREFORE**, Plaintiff prays that judgment be entered against Defendant for:

- an award of actual damages, in an amount to be determined at trial, pursuant to Cal. Civ. Code § 1788.30(a), against Defendant;
- an award of statutory damages of \$1,000.00, pursuant to Cal. Civ. Code § 1788.30(b), against Defendant;
- an award of costs of litigation and reasonable attorney's fees, pursuant to Cal. Civ. Code § 1788.30(c), against Defendant;
- an award of statutory damages of \$500.00, pursuant to 47 U.S.C. § 227(b)(3)(B), as a result of Defendant's negligent violations of 47 U.S.C. § 227(b)(1), against Defendant;

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- 1 • an award of statutory damages of \$1,500.00, pursuant to 47 U.S.C. §  
2 227(b)(3)(C), as a result of Defendant's knowing and/or willful  
3 violations of 47 U.S.C. § 227(b)(1), against Defendant;
- 4 • an award of injunctive award prohibiting such conduct in the future,  
5 pursuant to 47 U.S.C. § 227(b)(3)(A); and,
- 6 • any and all other relief that this Court deems just and proper.

7 **TRIAL BY JURY**

8 51. Pursuant to the seventh amendment to the Constitution of the United States of  
9 America, Plaintiff is entitled to, and demands, a trial by jury.

10  
11 Dated: October 20, 2015

12 Respectfully submitted,

13  
14 **KAZEROUNI LAW GROUP, APC**

15  
16 By: /s/ Matthew M. Loker  
17 MATTHEW M. LOKER , ESQ.  
18 ATTORNEY FOR PLAINTIFF